Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

C. Maynard Guest, M.D.
Executive Secretary

September 30, 1993

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mark S. Shaffer, M.D.
69-36A 215th Street
Bayside, New York 11364

RE: License No. 136330
Effective Date: 10/7/93

Dear Dr. Shaffer:

Enclosed please find Order #BPMC 93-150 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

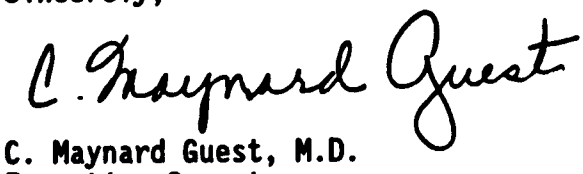
If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0756

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Tower Building-Room 1245
Albany, New York 12237

Sincerely,



C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

MARK S. SHAFFER, M.D.

CONSENT

ORDER
BPMC # 93-150

Upon the application of MARK S. SHAFFER, M.D., which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or seven days after mailing by certified mail.

SO ORDERED,

DATED: 24 September 1993

Charles J. Vacanti

Charles J. Vacanti, M.D.
Chairperson
State Board for Professional
Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER	:	APPLICATION
OF	:	FOR
MARK S. SHAFFER, M.D.	:	CONSENT
	:	ORDER

STATE OF NEW YORK)
ss.:
COUNTY OF WESTCHESTER)

MARK S. SHAFFER, M.D., being duly sworn, deposes and says:

That on or about October 20, 1978 I was licensed to practice as a physician in the State of New York, having been issued License No. 136330 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice as a physician in the State of New York for the period January 1, 1993 through December 31, 1994 from 69-36A 215th Street, Bayside, New York 11364.

I understand that the New York State Board for Professional Medical Conduct has charged me with Sixteen Specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the Eighth through Fourteenth Specifications (Willfully Making or Filing a False Report) and to the Sixteenth Specification (Failure to Maintain Accurate Records) in full satisfaction of the charges against me.

I hereby agree to the penalty Censure and Reprimand and a fine in the sum of Five Thousand ($5,000) Dollars. The fined amount will be due and payable within thirty (30) days from the date of the Order.

Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non renewal of permits or licenses (Tax Law section 171(27); State Finance Law section18; CPLR section 5001; Executive Law section 32).

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

MARK S. SHAFFER, M.D.
RESPONDENT

Sworn to before me this
29 day of July, 1993

NOTARY PUBLIC

MICHAEL DROSIHN
NOTARY PUBLIC, State of New York
No. 30-4831445
Qualified in Nassau County
Commission Expires October 31, 1993

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF MARK S. SHAFFER, M.D.	**APPLICATION FOR CONSENT ORDER**

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

Date: 7/29/93

MARK S. SHAFFER, M.D.
RESPONDENT

Date: July 20, 1993

WILLIAM WOOD, ESQ.
ATTORNEY FOR RESPONDENT

Date: 8/20/93

SILVIA PASTOR FINKELSTEIN
ASSOCIATE COUNSEL
BUREAU OF PROFESSIONAL
MEDICAL CONDUCT

Date: Sept. 28, 1993

KATHLEEN M. TANNER
DIRECTOR
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Date: 24 Sept. 1993

CHARLES J. VACANTI, M.D.
CHAIRPERSON
STATE BOARD FOR
PROFESSIONAL MEDICAL CONDUCT

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF MARK S. SHAFFER, M.D.	STATEMENT OF CHARGES

MARK S. SHAFFER, M.D., the Respondent, was authorized to practice medicine in New York State on October 20, 1978 by the issuance of license number 136330 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, (the identity of Patient A and all other patients is disclosed in the annexed Appendix), a 75 year old male, at his office, located at 69-36A 215th Street, Bayside, New York 11364 (hereinafter referred to as Respondent's office), where Respondent maintained a private practice in internal medicine. On or about October 22, 1985, Patient A came to Respondent's office for an examination.

1. On or about October 22, 1985 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to

treatment allegedly rendered to Patient A, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

2. On or about October 22, 1985 Respondent knowingly and with intent to mislead stated in the Medicare claim form that he had performed bronko spasm evaluation (charged $100 dollars), determination of resistance to airflow (charged $100 dollars), and vital capacity (charged $100 dollars), on Patient A when Respondent knew he had not performed those tests.

3. On or about October 22, 1985, Respondent ordered and/or performed Doppler studies of the carotids and lower extremities on Patient A which were not indicated nor warranted by the condition of the Patient.

B. Respondent treated Patient B, a 68 year old male, at his office.

1. On or about August 5, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient B, which stated that Respondent had performed two fiberoptic colonoscopies beyond 25 cm on Patient B, on 1/7/86 and 7/1/86. Respondent charged $750

dollars for each procedure when Respondent knew that was not the service he had actually provided.

2. Respondent failed to maintain a medical record which accurately reflects the condition of and the treatment rendered to Patient B including but not limited to, January 7, 1986 and July 1, 1986.

C. Respondent treated Patient C, a 76 year old female, at his office.

1. On or about April 8, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient C on that date, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm on Patient C. Respondent charged $750 dollars for the procedure when Respondent knew that was not the service he had actually provided. Respondent listed a diagnosis of ulcerated colitis when Respondent knew Patient C was not suffering from that condition.

2. On or about April 30, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient C, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm on 4/29/86 on Patient C. Respondent charged $750 dollars for the procedure when Respondent knew that was not the service he had

actually provided. Respondent listed a diagnosis of ulcerated colitis when Respondent knew Patient C was not suffering from that condition.

3. On or about June 18, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient C on that date, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm on Patient C. Respondent charged $750 dollars for the procedure when Respondent knew that was not the service he had actually provided. Respondent listed a diagnosis of ulcerated colitis when Respondent knew Patient C was not suffering from that condition

D. Respondent treated Patient D, a 77 year old male, at his office.

1. On or about August 27, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient D on that date, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

2. On or about August 27, 1986 Respondent knowingly and with intent to mislead stated in the Medicare claim form for services

rendered on that date, that he had performed a Prolong Bronko spasm evaluation on Patient D (charged $200 dollars) and a determination of resistance to air flow (charged $150 dollars) when Respondent knew he had not performed those tests.

3. On or about October 8, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient D on that date, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

E. Respondent treated Patient E, a 71 year old male, at his office.

1. On or about July 2, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient E on that date, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

2. On or about July 2, 1986 Respondent knowingly and with intent to mislead stated in the Medicare claim form that he had performed a vital capacity test (charged $100 dollars), a Bronko

spasm evaluation on Patient E (charged $100 dollars), a determination of resistance to air flow (charged $100 dollars) and M.V.V. (charged $100 dollars) when Respondent knew he had not performed those tests.

3. On or about July 16, 1986 Respondent knowingly and with intent to mislead filed a Medicare claim form stating that he had performed a fiberoptic colonoscopy beyond 25 cm on Patient E and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

F. Respondent treated Patient F, a 68 year old female, at his office.

1. On or about February 25, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient F, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

2. On or about March 5, 1986 Respondent knowingly and with intent to mislead filed a Medicare-GHI claim form related to treatment allegedly rendered to Patient F, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm

and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

G. Respondent treated Patient G, a 62 year old female, at his office. On or about November 12, 1986, Patient G came to Respondent's office for an examination.

1. On or about November 12, 1986, Respondent knowingly and with intent to mislead filed a claim with Empire Blue Cross/Blue Shield related to treatment allegedly rendered to Patient G, which stated that Respondent had performed a fiberoptic colonoscopy beyond 25 cm and charged $750 dollars for performing said procedure when Respondent knew that was not the service he had actually provided.

2. On or about November 12, 1985 Respondent knowingly and with intent to mislead stated in the claim form filed with Empire Blue Cross/Blue Shield that he had performed prolonged bronchospasm evaluation on Patient G and charged $200 dollars for that service when Respondent knew he had not performed that testing.

SPECIFICATION OF CHARGES

FIRST THROUGH SEVENTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(2) (McKinney Supp. 1993), by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in paragraphs A and A.1 and/or A.2.
2. The facts in paragraphs B and B.1.
3. The facts in paragraphs C and C.1, and/or C.2, and/or C.3.
4. The facts in paragraphs D and D.1, and/or D.2 and/or D.3.
5. The facts in paragraphs E and E.1, and/or E.2, and/or E.3.
6. The facts in paragraphs F and F.1 and/or F.2.
7. The facts in paragraphs G and G.1 and/or G.2.

EIGHTH THROUGH FOURTEENTH SPECIFICATIONS

WILLFULLY MAKING OR FILING A FALSE REPORT

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(21) (McKinney Supp. 1993), by willfully making of filing a false report, or inducing another person to do so, in that Petitioner charges:

8. The facts in paragraphs A and A.1 and/or A.2.

9. The facts in paragraphs B and B.1.
10. The facts in paragraphs C and C.1, and/or C.2, and/or C.3.
11. The facts in paragraphs D and D.1 and/or D.2, and/or D.3.
12. The facts in paragraphs E and E.1 and/or E.2, and/or E.3.
13. The facts in paragraphs F and F.1, and/or F.2.
14. The facts in paragraphs G and G.1, and/or G.2.

FIFTEENTH SPECIFICATION

ORDERING TREATMENT OR USE OF TREATMENT FACILITIES NOT WARRANTED BY THE CONDITION OF THE PATIENT

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(35), (Mc Kinney's, Supp. 1993), by ordering excessive treatment or use of treatment facilities not warranted by the condition of the patient, in that Petitioner charges:

15. The facts in paragraph A and A.3.

SIXTEENTH SPECIFICATION

FAILURE TO MAINTAIN ACCURATE RECORDS

Respondentg is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(32) (McKinney's Supp. 1993), by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

16. The facts in paragraph B and B.1, and/or B.2.

DATED: New York, New York
1993

CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct